

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 February 2014

**Public Authority:** Home Office  
**Address:** 2 Marsham Street  
London  
SW1P 4DF

#### **Decision (including any steps ordered)**

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1. The complainant requested a copy of a page from the General Register Office detailing deaths in the Lambeth quarter in 1900. The Home Office refused to provide the requested information on the basis that it is reasonably accessible by other means (section 21 of FOIA).
2. The Commissioner's decision is that the Home Office breached section 10 of FOIA by failing to respond to the request within 20 working days. He finds that section 21 applies to all of the requested information with the exception of the Superintendent Registrar's declaration on the specified page. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide a copy of the Superintendent Registrar's declaration which appears on page 310 of Volume 1d of deaths in Lambeth for the December quarter of 1900.
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Background

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4. The Registration Acts (the Births and Deaths Registration Act 1953 and the Marriage Act 1949) provide a framework for applicants to request a certified copy of an entry of births, marriages and deaths from the General Register Office (the 'GRO').
5. In order for the GRO to supply information from these entries, the Registration Acts stipulate that an applicant needs to identify an entry and pay a statutory fee. The GRO then issues a certified copy (or certificate) of that entry. The Home Office has confirmed that there is no provision in the Registration Acts for the GRO to provide the information in another way.
6. The Commissioner understands that the GRO receives from each register office, four times a year, copies of each register entry of births, deaths and marriages which they have compiled. In practice, this is now done electronically rather than on paper as previously. Under the Registration Acts, the GRO is obliged to compile a national index to these entries and groups the entries in such a way that they can provide a meaningful index and enable the public to search.
7. In earlier years when the copies were received on paper, they would be submitted showing several entries on the same page (as is the case being considered below). In this instance the index would show that these entries for the deaths (which would be indexed by the name of the deceased) were to be found in Volume 1d, page 310 of the entries for the December quarter of 1900. This would enable the GRO to track the entry down once the applicant had supplied the index reference or name as part of their application.

## Request and response

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8. On 14 July 2013 the complainant wrote to HM Passport Office, which is part of the Home Office, and requested information in the following terms:

*"I am writing to ask for a copy of the following page of a register that is held by the General Register Office: Event type – Deaths District – Lambeth Quarter – October to December quarter 1900 Volume – 1d Page – 310 Format of information. The information does not need to be certificated in any way. If possible, please send the information by email as a scanned image of the relevant page to me at [email address redacted]. Alternative means of supplying the information? The*

*General Register Office has not compiled indices in a format from which I can discover the names of the people whose deaths are recorded on the relevant page, so I cannot order their death certificates. Therefore, the information that I am requesting is not accessible to me by means other than that set out in the request itself."*

9. The Home Office responded on 14 August 2013. It confirmed that it held the requested information, but explained that it considered section 21 of FOIA to apply because the Registration Acts already provide a framework for disclosure via the issue of a 'certified copy' of each entry on the specified page.
10. The complainant requested an internal review on 21 August 2013. The Home Office provided the internal review result on 18 September 2013. It maintained that section 21 is applicable, explaining that the GRO groups the entries in such a way as to provide a meaningful index and to enable the public to search, with page and volume numbers given.
11. The Home Office acknowledged that the only piece of information on the page the complainant had requested that would not be shown on the certified copy, is the Superintendent Registrar's declaration at the foot of the page, whereby he is verifying to the Registrar General that the entries are a true copy of the records held in his office.

### **Scope of the case**

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12. The complainant contacted the Commissioner on 7 October 2013 to complain about the way his request for information had been handled. He contended that it is unreasonable for him to have to manually search in the region of 100,000 deaths through the GRO's indices for the December quarter of 1900 in order to identify those death entries which appear on page 310.
13. The Commissioner has considered whether the Home Office has properly applied section 21 to the request and thereby whether the requested information is reasonably accessible by other means.

### **Reasons for decision**

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14. Section 21(1) of FOIA states that

*"Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information."*

15. This means that where a complainant is reasonably able to obtain the information from another source then the information is exempt from disclosure under FOIA.
16. Section 21(2) (a) states:  
  
*"information may be reasonably accessible to the applicant even though it is accessible only on payment,"*
17. This means that even where the complainant would be required to pay a fee to obtain the information from the other source the exemption will still be applicable.
18. Section 21(2)(b) states that  
  
*"Information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment."*
19. This means that where an authority is obliged to provide that information to a requestor by law then that information will be deemed to be reasonably accessible for the purposes of the exemption. The proviso is if the authority is only required to provide the information by inspection, then the presumption that the information is reasonably accessible will not apply.

*Is the information reasonably accessible under other legislation?*

20. The Home Office argued that the information should not be provided under FOIA, but instead under the provisions of the Registration Acts. It said that the information contained on page 310 is reasonably accessible to the complainant via the provisions in the Registration Acts, by the purchase of a certified copy of each of the entries on that page, and that it is therefore exempt under section 21(1) of FOIA.
21. In support of its view the Home Office argued that the FOIA is not intended to be used to circumvent an already existing statutory procedure for releasing information. It said that the existing Registration Acts procedure specifies that the information may be released in the form of a certified copy, and whilst acknowledging that the complainant may not necessarily want such a document, it stated *"the existence of this procedure means that the information is already reasonably accessible to him albeit on payment of a fee"*.

22. In response to the Commissioner's investigation the Home Office confirmed that either the name of the deceased or the GRO index reference is required to obtain a certified copy of each entry of death. It explained that the GRO index is put together on the basis of names (in alphabetical order) and said that the expectation is that someone searching for details of entries would know the names concerned.
23. The Home Office provided the Commissioner with a copy of the requested page 310 which has space for a maximum of ten entries. It confirmed that by providing certified copies of each entry on that page, using the Registration Acts process, this would include disclosure of all the recorded information with the exception of the Superintendent Registrar's declaration.
24. It further explained that the GRO uses scanned images when producing a death certificate. Therefore, for each entry on page 310, the certificate provided would include the district (Lambeth), sub-district (Norwood), date (1900) and county (London); the only information which would not appear on the certified copy is the Superintendent's signature. All other material information on the page is provided.
25. The Home Office further explained that the register is indexed by name as it has to be indexed in some way and names are considered to be the easiest way to search in the majority of cases as requesters may not know the date or location of a death, but usually know the name of the deceased. It added that because the entries from 1900 are all handwritten, they cannot be cross-referenced by entering different search fields.
26. Mindful that the search of the indices in this case would be labour intensive as the requester has not asked for details about a named party, the Commissioner asked the Home Office how it would respond if the request had been worded as "*all deaths in the register*" for the period and location in question. In reply, the Home Office reiterated that its indexes are compiled on a names basis and that it would usually expect an applicant to supply a name and other details, or the GRO index reference.
27. However, it said that if the applicant was able to provide sufficient information to enable the Home Office to **definitely** identify the entries concerned (as in this scenario "*all entries on page 310 of Volume 1D for Lambeth December Quarter 1900*" or "*all entries of the December Quarter 1900 registered in Lambeth*"), that it would issue the information, but that this would be as certified copies of each entry and would be on condition that the applicant supplied in advance the requisite statutory fee (currently £9.25 per certificate) and that there were no concerns about data protection.

28. In addition the Home Office referenced the Commissioner's guidance on section 21<sup>1</sup> which gives the issue of a certificate of registration (using a birth certificate but exactly the same applies to death certificates), as an example of where information is held to be reasonably accessible to the applicant (paragraph 33).
29. Further, the Home Office said that if it were to accept the complainant's position, then those applying to the GRO for information from the registers would not in future need to apply for a certified copy. Instead, they would only need to submit a request under FOIA for the relevant page in GRO's documentation. The Commissioner accepts that this is not the intention of FOIA when a legislative framework already exists for the release of registration information.
30. The Commissioner has considered the complainant's argument that it is unreasonable for him to have to search over 100,000 entries in the indexes in order to identify those deaths which appear on page 310. From the wording of his request, ie "[The GRO] *has not compiled indices in a format from which I can discover the names of the people whose deaths are recorded on the relevant page, so I cannot order their death certificates*", it would appear that the complainant does not know which names or how many entries appear on that page. However, the Commissioner does not consider that this argument carries much weight. This is because the complainant does not need to know the names in order to order the death certificates on that page, he only has to pay the statutory fee for each of the entries concerned. He therefore does not have to search all 100,000 entries in the indexes to glean the names of the deceased held on that page – unless he is trying to avoid paying the fee – and he can in fact access any or all of the entries on this page, or any other page, via the existing regime.
31. The Commissioner is also mindful of his guidance on "*Information in the public domain*"<sup>2</sup> (paragraph 33) which states that:

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~/media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf](http://ico.org.uk/for_organisations/guidance_index/~/media/documents/library/Freedom_of_Information/Detailed_specialist_guides/information-reasonably-accessible-to-the-applicant-by-other-means-sec21.pdf)

2

[http://ico.org.uk/~media/documents/library/Freedom\\_of\\_Information/Detail\\_ed\\_specialist\\_guides/information-in-the-public-domain-foi-eir-guidance.ashx](http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detail_ed_specialist_guides/information-in-the-public-domain-foi-eir-guidance.ashx)

*"Information available for a fee may still be considered available to the public:*

**Example**

*In S v Information Commissioner and GRO (EA/2006/0030, 9 May 2007), the Information Tribunal decided that the information on a death certificate was in the public domain despite the payment of a fee: "the Tribunal is satisfied that the public record is the entry created in the Death Register. Only the specific information required to be put on the death certificate is accessible to the public. This is apparent from the fact that a copy is available following the payment of a fee by any member of the public."*

32. Although in this case, the Commissioner accepts that it would be arduous for the complainant to have to search through 100,000 deaths for the December quarter of 1900 to identify those entries which appear on page 310, for the reasons given above he is satisfied that this is not necessary (unless the complainant wishes to avoid payment) and the existing access route would lead the complainant to the particular deaths and information which appear on that page.
33. The complainant could resubmit his request to the Home Office and ask it to provide all the entries which appear on page 310, under the terms of the Registration Acts. He would then be asked to pay the requisite fee to cover each entry on the page and receive all the requested information from that page, minus the declaration. As part of his request, the complainant could ask the Home Office to also confirm how many entries appear on page 310, so that he would know in advance the cost of applying for the information via the Registration Acts. If he wishes to know whether any other recorded information is held which would not normally be provided in responding to such a request, he could ask that any additional information, ie anything which is not accessible to him via the Registration Acts regime, is provided under the terms of the FOIA.
34. The Commissioner is satisfied that all the information which appears on page 310 of the requested volume is accessible to the complainant via the Registration Acts regime, with the exception of the Superintendent Registrar's declaration. His decision, therefore, is that the Home Office was correct to apply section 21 to this request, although he requires it to provide the complainant with a copy of the Superintendent Registrar's declaration as this recorded information is not available via the Registration Acts' route.

35. The Home Office breached section 10(1) of FOIA by failing to provide its response to the request within the statutory 20 working days' time limit.



## Right of appeal

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36. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

37. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
38. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Jon Manners**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**Cheshire**  
**SK9 5AF**